

Gardephe

08 CV 7188

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

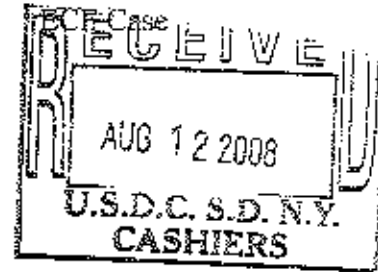
-----X  
ATLAS BULK SHIPPING AS,

Plaintiff,

- against -

CEMENTOS CASTILLA LA MANCHA, S.A.

Defendant.  
-----X



**VERIFIED COMPLAINT**

Plaintiff, ATLAS BULK SHIPPING AS (hereinafter "Atlas" or "Plaintiff"), by and through its attorneys, Lennon, Murphy & Lennon, LLC, as and for its Verified Complaint against the Defendants, CEMENTOS CASTILLA LA MANCHA, S.A. (hereinafter "Cementos" or "Defendant"), alleges, upon information and belief, as follows:

1. This is an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure and 28 United States Code § 1333. This claim involves the breach of a maritime contract of charter. This matter also arises under the Court's federal question jurisdiction within the meaning of 28 United States § 1331.
2. At all times material to this action, Plaintiff was, and still is, a foreign corporation, or other business entity organized and existing under foreign law with an office and place of business at Sundkaj 11, 2100 Copenhagen, Denmark.
3. Upon information and belief, Defendant was, and still is, a foreign corporation or other business entity organized and existing under foreign law with an office and place of business at Cira, CM 2102 KM. 1, 16440 Montalbo Cuenca, Spain.
4. At all times material to this action, Plaintiff was the disponent owner of the vessel M/V "GEM OF COCHIN" (hereinafter the "Vessel").

5. By a charter party contract dated July 16, 2008, (hereinafter the "Charter Party") Plaintiff chartered the Vessel to Defendant for the carriage of 65,000 metric tons (5% +/-) of cement clinker in bulk from the load ports of Nantong and Zhoushan, China to the discharge ports of Valencia or Cartagena, Spain at a freight rate of \$51.50 per metric ton. *A copy of the Charter Party is annexed hereto as Exhibit 1.*

6. Part II Clause 22 of the Charter Party provides:

95% of freight to be paid in U.S. Dollars directly into the Owner's bank and account within 5 days from signing and releasing Bills of Lading marked "Freight payable as per Charter Party", and Charterers receiving Owners faxed invoice, on Bills of Lading weight.

*See Exhibit 1 annexed hereto.*

7. Bills of lading were issued on July 25, 2008 and July 27, 2008 and released on August 1, 2008 and, thus, 95% of the freight in the amount of \$3,062,386.99 became due and owing to Plaintiff on August 6, 2008.

8. Plaintiff duly issued its Freight Invoice to Defendant in the sum of \$3,062,386.99.

*See Exhibit 2 annexed hereto.*

9. Subsequently, Defendant issued a message to Plaintiff advising that it would not pay the freight and did not consider itself bound by the terms of the Charter Party contract because it had sold the cement clinker cargo to a third party.

10. At all material times Plaintiff duly and fully performed its duties and obligations under the Charter Party.

11. Defendant's failure to pay Plaintiff the outstanding freight in the amount of \$3,062,386.99 constitutes a breach of the Charter Party contract.

12. Plaintiff has suffered damages as a result of the Defendant's breach of the Charter Party contract.

13. Pursuant to Part I Clause 25 and Part II Clause 36 of the Charter Party, all disputes between the parties are to be submitted to arbitration in London with English Law to apply. Plaintiff will commence arbitration once jurisdiction is obtained over Defendant in this action. *See Exhibit 1 annexed hereto.*

14. This action is brought to obtain jurisdiction over the Defendant in aid of the arbitration proceeding to be commenced and to obtain security for Plaintiff's claims.

15. Interest, costs and attorneys' fees are routinely awarded to the prevailing party in proceedings subject to English Law. Section 63 of the English Arbitration Act of 1996 specifically allows for recovery of these items as part of an award in favor of the prevailing party.

16. As best as can now be estimated, Plaintiff expects to recover the following amounts at arbitration as the prevailing party:

a.	Principal Claim:	\$3,062,386.99
b.	Interest on principal claim for 2 years, compounded quarterly at 8 %:	\$ 525,687.75
c.	Estimated arbitration costs:	\$ 35,000.00
d.	Estimated recoverable legal fees and costs:	\$ 300,000.00
<b>Total:</b>		<b>\$3,923,074.74</b>

17. The Defendant cannot be found within this District within the meaning of Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure, but, upon information and belief, Defendant has, or will have during the pendency of this action, assets within this District and subject to the jurisdiction of this Court, held in the hands of one or more garnishees which are believed to be due and owing to the

E. That this Court retain jurisdiction over this matter through the entry of any judgment or award associated with any of the claims currently pending, or which may be initiated in the future, including any appeals thereof;

F. That this Court award Plaintiff its attorney's fees and costs of this action; and

G. That the Plaintiff have such other, further and different relief as the Court may deem just and proper.

Dated: August 11, 2008  
New York, NY

The Plaintiff,  
ATLAS BULK SHIPPING AS

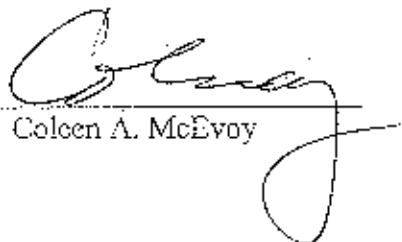
By: 

Patrick F. Lennon  
Colcen A. McEvoy  
LENNON, MURPHY & LENNON, LLC  
420 Lexington Ave., Suite 300  
New York, NY 10170  
(212) 490-6050 – phone  
(212) 490-6070 – fax  
[pfl@lennmur.com](mailto:pfl@lennmur.com)  
[cam@lennmur.com](mailto:cam@lennmur.com)

ATTORNEY'S VERIFICATION

1. My name is Coleen A. McEvoy.
2. I am over 18 years of age, of sound mind, capable of making this Verification, and fully competent to testify to all matters stated herein.
3. I am an attorney in the firm of Lennon, Murphy & Lennon, LLC, attorneys for the Plaintiff.
4. I have read the foregoing Verified Complaint and know the contents thereof and believe the same to be true and accurate to the best of my knowledge, information and belief.
5. The reason why this Verification is being made by the deponent and not by the Plaintiff is that the Plaintiff is a business organization with no officers or directors now within this District.
6. The source of my knowledge and the grounds for my belief are the statements made, and the documents and information received from, the Plaintiff and agents and/or representatives of the Plaintiff.
7. I am authorized to make this Verification on the Plaintiff's behalf.

Dated: August 11, 2008  
New York, NY

  
Coleen A. McEvoy

Defendant. *See Affidavit in Support of Prayer for Maritime Attachment annexed hereto as Exhibit "3".*

18. The Plaintiff seeks an order from this court directing the Clerk of Court to issue Process of Maritime Attachment and Garnishment pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims, and also pursuant to the United States Arbitration Act, 9 U.S.C. §§ 1 and 8, attaching, *inter alia*, any assets of the Defendant held by the aforesaid garnishee for the purpose of obtaining personal jurisdiction over the Defendant and to secure the Plaintiff's claims as described herein.

**WHEREFORE**, Plaintiff prays:

A. That process in due form of law issue against the Defendant, citing it to appear and answer under oath all and singular the matters alleged in the Verified Complaint

B. That pursuant to 9 U.S.C. §§ 201. *et seq.* and/or the doctrine of comity this Court recognize and confirm any foreign judgment or arbitration award rendered on the claims had herein as a Judgment of this Court;

C. That since the Defendant cannot be found within this District pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims, this Court issue an Order directing the Clerk of Court to issue Process of Maritime Attachment and Garnishment pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims, attaching all tangible or intangible property of the Defendant within the District, including but not limited to any funds held by any garnishee, which are due and owing to the Defendant, up to the amount **\$3,923,074.74** to secure the Plaintiff's claims, and that all persons claiming any interest in the same be cited to appear and pursuant to Supplemental Admiralty Rule B answer the matters alleged in the Complaint;

D. That this Court enter Judgment against Defendant on the claims set forth herein;

E. That this Court retain jurisdiction over this matter through the entry of any judgment or award associated with any of the claims currently pending, or which may be initiated in the future, including any appeals thereof;

F. That this Court award Plaintiff its attorney's fees and costs of this action; and

G. That the Plaintiff have such other, further and different relief as the Court may deem just and proper.

Dated: August 12, 2008  
New York, NY

The Plaintiff,  
ATLAS BULK SHIPPING AS

By: 

Patrick F. Lennon  
Coleen A. McEvoy  
LENNON, MURPHY & LENNON, LLC  
420 Lexington Ave., Suite 300  
New York, NY 10170  
(212) 490-6050 -- phone  
(212) 490-6070 -- fax  
[pfl@lenmur.com](mailto:pfl@lenmur.com)  
[cam@lenmur.com](mailto:cam@lenmur.com)

ATTORNEY'S VERIFICATION

1. My name is Colleen A. McEvoy.

2. I am over 18 years of age, of sound mind, capable of making this

Verification, and fully competent to testify to all matters stated herein.

3. I am an attorney in the firm of Lennon, Murphy & Lennon, LLC, attorneys for the Plaintiff.

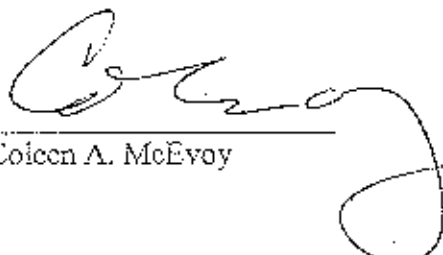
4. I have read the foregoing Verified Complaint and know the contents thereof and believe the same to be true and accurate to the best of my knowledge, information and belief.

5. The reason why this Verification is being made by the deponent and not by the Plaintiff is that the Plaintiff is a business organization with no officers or directors now within this District.

6. The source of my knowledge and the grounds for my belief are the statements made, and the documents and information received from, the Plaintiff and agents and/or representatives of the Plaintiff.

7. I am authorized to make this Verification on the Plaintiff's behalf.

Dated: August 12, 2008  
New York, NY

  
Colleen A. McEvoy



## **EXHIBIT 1**



1. Shipbroker  Box Marine Iberica, S. L., Madrid		RECOMMENDED THE BALTIC AND INTERNATIONAL MARITIME COUNCIL UNIFORM GENERAL CHARTER (AS REVISED 1922, 1976 AND 1994) (To be used for trades for which no specially approved form is in force) CODE NAME: "GENCON" <span style="float: right;">Part I</span>	
3. Owners/Place of business (Cl. 1)  ATLAS BULK SHIPPING A/S 11, Sundvej 2100 COPENHAGEN (Denmark)		2. Place and date Madrid 16th July 2008	
5. Vessel's name (Cl. 1) "GEM OF COCHIN" - See Clause 21		4. Charterers/Place of business (Cl. 1)  CEMENTOS CASTILLA LA MANCHA, S. A., MONTALBO (Spain)	
7. DWT at load on summer load line in metric tons (abt.) (Cl. 1)  See Clause 21		6. GN/NT (Cl. 1) 37319 / 19445	
9. Expected ready to load (abt.) (Cl. 1) 21st July 2008 - See also Clause 20		8. Present position (Cl. 1)  Trading	
10. Loading port or place (Cl. 1) One safe berth NANTONG (laden draft 10.20 m. - Max. LOA 230 m. Max. beam 32.20 m. - WLTHC 12 m.), where shall load up to max. draft topping up balance quantity in 2nd loadport ZHOUSHAN, laden draft 14 M.		11. Discharging port or place (Cl. 1)  One safe berth VALENCIA or CARTAGENA (Spain) in Charterer's option - See also Clause 27	
12. Cargo (also state quantity and margin in Owners' option, if agreed; if full and complete cargo not agreed state "part cargo") (Cl. 1)  65,000 MT 5% MOLOO of CEMENT CLINKER IN BULK  (Estimated intake abt. 62,500 / 63,000 MT; estimated intake basis 1st load port abt. 46,800 MT on 10.2 m. FW draft)			
13. Freight rate (also state whether freight prepaid or payable on delivery) (Cl. 4)  US\$ 51.50 per MT FIOY		14. Freight payment (state currency and method of payment; also beneficiary and bank account) (Cl. 4)  See Clause 22	
15. State if vessel's cargo handling gear shall not be used (Cl. 5)		16. Laytime (if separate laytime for load. and disch. is agreed, fill in a) and b). If total laytime for load. and disch., fill in c) only) (Cl. 6) (a) Laytime for loading See Clause 26 (b) Laytime for discharging See Clause 27 (c) Total laytime for loading and discharging	
17. Shippers/Place of business (Cl. 6)			
18. Agents (loading) (Cl. 5) Owners nominate Agents, see also Clause 23			
19. Agents (discharging) (Cl. 5) Charterers nominate Agents, see also Clause 23			
20. Demurrage rate and manner payable (loading and discharging) (Cl. 7)  See Clause 29		21. Cancellation date (Cl. 9) 25th July 2008	
23. Freight Tax (note if for the Owners' account) (Cl. 13(c)) See Clause 35		22. General Average to be adjusted at (Cl. 12) English Law, London	
25. Law and Arbitration (state 19(a), 19(b) or 19(c) of Cl. 19; if 19(c) agreed also state Place of Arbitration) (if not filed in 19(a) shall apply) (Cl. 19)  English Law, London, see Clause 36 (a) State maximum amount for small claims/shorened arbitration (Cl. 19)		24. Brokerage commission and to whom payable (Cl. 15)  1.25% to Box Marine Iberica, S. L., Madrid 1.25% London Shipbroking Company Limited	
Signature (Owners)		26. Additional clauses covering special provisions, if agreed Clauses 20-45 as attached are deemed fully incorporated in this C/P.  Signature (Charterers)	

It is mutually agreed that this Contract shall be performed subject to the conditions contained in this Charter Party which shall include Part I as well as Part II. In the event of a conflict of conditions, the provisions of Part I shall prevail over those of Part II to the extent of such conflict.

Signature (Owners)	Signature (Charterers)
--------------------	------------------------

COPY

## PART II

## "Gencon" Charter (As Revised 1922, 1976 and 1994)

1	It is agreed between the party mentioned in <u>Box 2</u> of the Charter Party that the Owners of the vessel named in <u>Box 3</u> of the Charter Party shall be responsible for the cargo as per the Charter Party.	105	106	107	108	109	110	111	112	113	114	115	116	117	118	119	120	121	122	123	124	125	126	127	128	129	130	131	132	133	134	135	136	137	138	139	140	141	142	143	144	145	146	147	148	149	150	151	152	153	154	155	156	157	158	159	160	161	162	163	164	165	166	167	168	169	170	171	172	173	174	175	176	177	178	179	180	181	182	183	184	185	186	187	188	189	190	191	192	193	194	195	196	197	198	199	200	201	202	203	204	205	206	207	208	209	210	211	212	213	214	215	216	217	218	219	220	221	222	223	224	225	226	227	228	229	230	231	232	233	234	235	236	237	238	239	240	241	242	243	244	245	246	247	248	249	250	251	252	253	254	255	256	257	258	259	260	261	262	263	264	265	266	267	268	269	270	271	272	273	274	275	276	277	278	279	280	281	282	283	284	285	286	287	288	289	290	291	292	293	294	295	296	297	298	299	300	301	302	303	304	305	306	307	308	309	310	311	312	313	314	315	316	317	318	319	320	321	322	323	324	325	326	327	328	329	330	331	332	333	334	335	336	337	338	339	340	341	342	343	344	345	346	347	348	349	350	351	352	353	354	355	356	357	358	359	360	361	362	363	364	365	366	367	368	369	370	371	372	373	374	375	376	377	378	379	380	381	382	383	384	385	386	387	388	389	390	391	392	393	394	395	396	397	398	399	400	401	402	403	404	405	406	407	408	409	410	411	412	413	414	415	416	417	418	419	420	421	422	423	424	425	426	427	428	429	430	431	432	433	434	435	436	437	438	439	440	441	442	443	444	445	446	447	448	449	450	451	452	453	454	455	456	457	458	459	460	461	462	463	464	465	466	467	468	469	470	471	472	473	474	475	476	477	478	479	480	481	482	483	484	485	486	487	488	489	490	491	492	493	494	495	496	497	498	499	500	501	502	503	504	505	506	507	508	509	510	511	512	513	514	515	516	517	518	519	520	521	522	523	524	525	526	527	528	529	530	531	532	533	534	535	536	537	538	539	540	541	542	543	544	545	546	547	548	549	550	551	552	553	554	555	556	557	558	559	560	561	562	563	564	565	566	567	568	569	570	571	572	573	574	575	576	577	578	579	580	581	582	583	584	585	586	587	588	589	590	591	592	593	594	595	596	597	598	599	600	601	602	603	604	605	606	607	608	609	610	611	612	613	614	615	616	617	618	619	620	621	622	623	624	625	626	627	628	629	630	631	632	633	634	635	636	637	638	639	640	641	642	643	644	645	646	647	648	649	650	651	652	653	654	655	656	657	658	659	660	661	662	663	664	665	666	667	668	669	670	671	672	673	674	675	676	677	678	679	680	681	682	683	684	685	686	687	688	689	690	691	692	693	694	695	696	697	698	699	700	701	702	703	704	705	706	707	708	709	710	711	712	713	714	715	716	717	718	719	720	721	722	723	724	725	726	727	728	729	730	731	732	733	734	735	736	737	738	739	740	741	742	743	744	745	746	747	748	749	750	751	752	753	754	755	756	757	758	759	760	761	762	763	764	765	766	767	768	769	770	771	772	773	774	775	776	777	778	779	780	781	782	783	784	785	786	787	788	789	790	791	792	793	794	795	796	797	798	799	800	801	802	803	804	805	806	807	808	809	810	811	812	813	814	815	816	817	818	819	820	821	822	823	824	825	826	827	828	829	830	831	832	833	834	835	836	837	838	839	840	841	842	843	844	845	846	847	848	849	850	851	852	853	854	855	856	857	858	859	860	861	862	863	864	865	866	867	868	869	870	871	872	873	874	875	876	877	878	879	880	881	882	883	884	885	886	887	888	889	890	891	892	893	894	895	896	897	898	899	900	901	902	903	904	905	906	907	908	909	910	911	912	913	914	915	916	917	918	919	920	921	922	923	924	925	926	927	928	929	930	931	932	933	934	935	936	937	938	939	940	941	942	943	944	945	946	947	948	949	950	951	952	953	954	955	956	957	958	959	960	961	962	963	964	965	966	967	968	969	970	971	972	973	974	975	976	977	978	979	980	981	982	983	984	985	986	987	988	989	990	991	992	993	994	995	996	997	998	999	1000
---	---	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	------



COPY

PART II  
 "Gencon" Charter (As Revised 1922, 1976 and 1994)

14. Agency	257	(5) The Vessel shall have liberty to	374
In every case the Charterers must appoint their own agent to be at the port of loading and the port of discharge. See clause 23	258	(a) to comply with all orders, directions, recommendations or advice as to	375
	259	departure, arrival, routes, sailing in, conveyance of cargo, stoppages,	376
	260	discharge of cargo, delivery or in any way whatsoever which	377
	261	are given by the Government of the Nation under whose flag the Vessel	378
	262	sails, or other Government to whom the Charterers are subject, or any	379
	263	other Government which so requires, or any body or group acting with the	380
	264	power to compel compliance with their orders or directions;	381
	265	(b) to comply with the orders, directions or recommendations of any war	382
	266	risks underwriters who have the authority to give the same under the terms	383
	267	of the war risks insurance;	384
	268	(c) to comply with the terms of any resolution of the Security Council of the	385
	269	United Nations, any chamber of the European Community, the obligatory	386
	270	orders of any other Supranational body, which has the right to issue and	387
	271	give the same, and with national laws aimed at enforcing the same to which	388
	272	the Charterers are subject, and to obey the orders and directions of those who	389
	273	are charged with their enforcement;	390
	274	(d) to discharge at any other port any cargo or part thereof which may	391
	275	render the vessel liable to confiscation as a contraband carrier;	392
	276	(e) to call at any other port to change the crew or any part thereof or other	393
	277	persons on board the vessel when there is reason to believe that they may	394
	278	be subject to imprisonment, imprisonment or other sanctions;	395
	279	(f) where cargo has not been loaded or has been discharged by the	396
	280	Charterers under any provisions of this Clause, to load other cargo for the	397
	281	Charterers' own benefit and carry it to any other port or ports at whatever	398
	282	whether backwards or forwards or in a contrary direction to the ordinary or	399
	283	whichever route;	400
	284	(g) if in compliance with any of the provisions of sub-clauses (2) to (5) of this	401
	285	Clause anything is done or not done, such shall not be deemed to be a	402
	286	deviation, but shall be considered as due fulfilment of the Contract if	403
	287	Carriage	404
	288		
	289		
	290		
	291		
	292		
	293		
	294		
	295		
	296		
	297		
	298		
	299		
	300		
	301		
	302		
	303		
	304		
	305		
	306		
	307		
	308		
	309		
	310		
	311		
	312		
	313		
	314		
	315		
	316		
	317		
	318		
	319		
	320		
	321		
	322		
	323		
	324		
	325		
	326		
	327		
	328		
	329		
	330		
	331		
	332		
	333		
	334		
	335		
	336		
	337		
	338		
	339		
	340		
	341		
	342		
	343		
	344		
	345		
	346		
	347		
	348		
	349		
	350		
	351		
	352		
	353		
	354		
	355		
	356		
	357		
	358		
	359		
	360		
	361		
	362		
	363		
	364		
	365		
	366		
	367		
	368		
	369		
	370		
	371		
	372		
	373		
	374		
	375		
	376		
	377		
	378		
	379		
	380		
	381		
	382		
	383		
	384		
	385		
	386		
	387		
	388		
	389		
	390		
	391		
	392		
	393		
	394		
	395		
	396		
	397		
	398		
	399		
	400		
	401		
	402		
	403		
	404		
	405		
	406		
	407		
	408		
	409		
	410		
	411		
	412		
	413		
	414		
	415		
	416		
	417		
	418		
	419		
	420		
	421		
	422		
	423		
	424		
	425		
	426		
	427		
	428		
	429		
	430		
	431		
	432		
	433		
	434		
	435		
	436		
	437		
	438		
	439		
	440		
	441		
	442		
	443		
	444		
	445		
	446		
	447		
	448		
	449		
	450		
	451		
	452		
	453		
	454		
	455		
	456		
	457		
	458		
	459		
	460		
	461		
	462		
	463		
	464		
	465		
	466		
	467		
	468		
	469		
	470		
	471		
	472		
	473		
	474		
	475		
	476		
	477		
	478		
	479		
	480		
	481		
	482		
	483		
	484		
	485		
	486		
	487		
	488		
	489		
	490		
	491		
	492		
	493		
	494		
	495		
	496		
	497		
	498		
	499		
	500		

BMI

COPY

ADDITIONAL CLAUSES TO CHARTER PARTY MV "GEM OF COCHIN"  
CEMENT CLINKER IN BULK – NANTONG AND ZHOUSHAN / VALENCIA OR CARTAGENA  
DATED IN MADRID 16<sup>th</sup> JULY 2008

**20. NOMINATION**

Deleted as not applicable.

**21. VESSEL DESCRIPTION**

Performing vessel to be Singledecker Bulkcarrier, maximum 26 years old, geared or gearless, and I.A.C.S.classified, ISM covered, fully P&I covered during the whole performance of this voyage. Vessel to comply with the I.S.P.S. regulations at both ends. OBO's are excluded.

Extra insurance owing to vessel age to be for Owner's account but max. US\$ 20,000.- Extra insurance to be settle against underwriter's copy of the original invoice.

M/V "GEM OF COCHIN" (Ex "Theofano") – Panama Flag – BIL 1982  
64,975 mt DWAT on 12.78 m. SSW. (TPC: 65.20 MT)  
7 Ho / Ha. of:  
No.1) 16 x 12.80 m. / Nos.2 & 5) 18.1 x 12.80 m. / Nos.3,6 & 7) 18.70 x 12.80 m. / No.4) 11.90 x 12.80 m.  
Abt. 2,672,028 cbft in main holds.  
LOA: 227.997 M. / Beam: 32.20 m.  
Class: B. V.  
P&I: Britannia.  
Port of Registry: Panama  
Call Letters: 3EQC5

**22. FREIGHT PAYMENT**

95% of freight to be paid in U.S. Dollars directly into the Owner's bank and account within 5 days from signing and releasing Bills of Lading marked "Freight payable as per Charter Party", and Charterers receiving Owners faxed invoice, on Bills of Lading weight.

Freight deemed earned on shipment and non-returnable vessel and/or cargo lost or not lost.

Balance of freight plus Demurrage less Despatch Money to be settled after right and true delivery of the cargo and Owners presenting final freight invoice, together with N.O.R., Time Sheet and S.O.F. duly signed by Master and vessel's Agent.

Documentation and submission acceptable even by fax.

An irrevocable Letter of Credit in Owner's favour for 95% of freight to be issued by Charterers bank.

Should there be a case of dead freight than laytime to be calculated on the basis of the amount of freight charged.

Owners bank:

DANSKE BANK A/S - HOLMENS KANAL 2-12 - 1090 COPENHAGEN K. (DENMARK)  
SWIFT ADD. : DABADKKK  
USD ACCOUNT NO. : 3001 536656  
USD IBAN NO. : DK27 3000 3001 536656  
IN FAVOUR OF : ATLAS BULK SHIPPING A/S  
REF. : MV "GEM OF COCHIN"

**BNI**

**COPY**

ADDITIONAL CLAUSES TO CHARTER PARTY MV "GEM OF COCHIN"  
CEMENT CLINKER IN BULK – NANTONG AND ZHOUSHAN / VALENCIA OR CARTAGENA  
DATED IN MADRID 16<sup>th</sup> JULY 2008

**22. (Continued)**

VIA CORRESPONDING US BANK:

BANK OF AMERICA N.A.,  
NEW YORK BRANCH  
U.S.A.

SWIFT ADD. : BOFAUS3N  
IN FAVOUR OF : DANSKE BANK, COPENHAGEN  
ACCOUNT NO. : 6550253668

**23. AGENCY.**

Owner's Agents at loading port to be nominated. Charterers' Agents at discharging port: Messrs. Marmesda if Valencia, Messrs. Ership if Cartagena

Customary vessel's port charges and expenses including berthing and unberthing expenses to be for Owner's account and Owners to make their own financial arrangements regarding port expenses via agents. Owners to put agents in funds prior to vessel's departure at respective port, failing which Owners are to be responsible for any delay to vessel caused by Owners failure to place agents in funds prior to vessel's departure.

**24. OPENING AND CLOSING OF HATCHES**

Opening and closing of hatches, at loading and discharging ports, to be for Owners account and time, and performed by ship's crew, if allowed by port regulations. If port regulations do not permit opening and closing of hatches to be done by crew, same to be arranged by Charterers at their time and expense. Vessel's hatchcovers to be watertight.

**25. ETA NOTICES**

Owner/Master to give notices as follows:

On fixing plus 3, 2 and 1 day ETA loading port.

If berth is occupied Master can tender Notice of Readiness via radio or in writing or by cable or by letter whether in berth or not, whether in port or not, whether customs cleared or not and whether in free pratique or not.

For discharge: Master to advise ETA at discharge port on completion of loading and thereafter every 20/15/10/5/3/2/1 day(s).

Master/Owners to send ETA notices to: Respective Agents and Charterers via [chartering@boxmarine.com](mailto:chartering@boxmarine.com)

Master will cable Receivers, Charterers and Agents at Discharging Port on vessel's sailing from loading port stating: Cargo loaded according to B/L, sailing and estimated arrival draft, and ETA discharge port. Should, by any reason, this ETA be delayed or advanced by more than 24 hrs, Owners/Master to cable agents and receivers immediately advising said change.



**BNI**

**COPY**

ADDITIONAL CLAUSES TO CHARTER PARTY MV "GEM OF COCHIN"  
CEMENT CLINKER IN BULK – NANTONG AND ZHOUSHAN / VALENCIA OR CARTAGENA  
DATED IN MADRID 16<sup>th</sup> JULY 2008

**26. LOADING TERMS**

Loading rates will be 15,000 metric tons at 1<sup>st</sup> loading port and 10,000 metric tons at 2<sup>nd</sup> loading port, always per weather working day of 24 consecutive hours. Sundays and Holidays included. Laytime in 2<sup>nd</sup> loading port shall be reversible.

Time of shifting from anchorage to loading berth not to count, even if vessel is already on demurrage.

The cargo to be loaded, stowed and trimmed by shore and/or floating cranes free of risk and expenses to the vessel. In case any damage on vessels's facility, the discrepancy shall be amicably solved between port stevedores and Owners directly, free of risk and expenses to the Shippers. However Shippers/Charterers to assist Owners in every possible way to collect outstandings from Stevedores.

At first loading port time to commence to count at 1 p.m. if NOR is tendered on or before noon, and at 6 a.m. of next day if NOR is tendered in the afternoon, unless loading sooner commenced W/BON. NOR shall be tendered shinc. At second loading port time to commence to count upon vessel arrival. At both loading ports WIPON, W/BON, WIFPON, WICON.

Laytime shall be terminated upon completion of actual loading.

Laytime shall not count when loading of cargo into vessel is prevented by adverse weather conditions unless vessel is already on demurrage.

**27. UNLOADING TERMS.**

Discharging rate will be 20,000 metric tons per weather working day of 24 consecutive hours, Sundays and Holidays included. Superholidays excluded.

Current Superholidays at discharging ports:

At Cartagena: 1<sup>st</sup> January, 16<sup>th</sup> July and 25<sup>th</sup> December.

At Valencia: 20:00 hrs. 31<sup>st</sup> December to 08:00 hrs. 2<sup>nd</sup> January, 6<sup>th</sup> January / 19<sup>th</sup> March, 16<sup>th</sup> July, 20:00 hrs. 24<sup>th</sup> December to 08:00 hrs. 26<sup>th</sup> December.

Notice of Readiness shall be tendered at any time day or night Sundays and Holidays included at the discharging port or its anchorage. Laytime to commence Twelve (12) hours after Notice of Readiness is tendered, whether in port or not, whether in berth or not, whether customs cleared or not and whether in free pratique or not, unless sooner worked. Time actually used before commencement of laytime shall count.

Master has the right to tender Notice of Readiness via cable/radio/telex whether in port or not, whether in berth or not, whether customs cleared or not and whether in free pratique or not.

If the determination of such turn time falls upon a period excluded, then time to commence to count at 08:00 hours a.m. on the next working day.

Time after a day excluded to commence to count at 08:00 hours a.m. on the next working day.

Time for shifting from anchorage to discharging berth not to count even if the vessel is already on demurrage.

Time for coast guard security clearance not to count as laytime.

BMI

COPY

ADDITIONAL CLAUSES TO CHARTER PARTY MV "GEM OF COCHIN"  
CEMENT CLINKER IN BULK - NANTONG AND ZHOUSHAN / VALENCIA OR CARTAGENA  
DATED IN MADRID 16<sup>th</sup> JULY 2008

**27. (Continued)**

If dock is available but port authorities refuse to enter the vessel due to bad weather, lack of visibility or any other physical reason regarding the safety of the vessel, crew or the port, any time lost waiting for port authorities approval for entering the port will not count as laytime.

Discharge time to cease upon completion of discharging cargo.

The cargo shall be taken from the holds by the Charterers/Receivers free of any risk, liability, expense to the vessel provided an officer from the crew is available to assist terminal for discharge procedure and supervision 24 hours a day. Master and crew to be fully cooperative in shifting/warping vessel alongside, reporting to Charterers/Agents information on load/discharge daily operations.

Other limitations / restrictions apart from draft at discharging port which is 14.50 m. SW guaranteed by Charterers, at Owners' risk.

**28. DEFAULT OF VESSEL READINESS**

If the vessel is inspected at anchorage or berth or if Notice of Readiness is tendered at an outside berth or after berthing and vessel fails inspection and found not to be ready in all respects to load or discharge, any actual time lost from the moment of the discovery thereof until she is in fact ready to load/discharge, shall not count as laytime.

**29. DEMURRAGE/DESPATCH**

Charterers to pay:

Demurrage, at the rate of USD. 55,000.- per day or pro rata, laytime lost both ends.

Owners to pay and allow despatch at half the demurrage rate on laytime saved both ends.

Laytime to be non-reversible between loading and discharging ports.

Time sheet calculations shall be based on the Statement of Facts issued by ship agent and countersigned by the Shippers/Receivers as well as Vessel's Master.

**30. HOLD CLEANLINESS AND CARGO DAMAGE**

Vessel must be in suitable condition in all respects to load commodity (clinker). Vessel's holds must be dry and clean, draft marks must be readable. Holds cleanliness survey to be performed by Independent Surveyor available at Nantong port mutually agreed. Free of any residue, rust scale, leakage may cause vessel to fail inspection. In this case, inspection will be renewed. Charterers will not be responsible for damage to sweat battens, trimming hatch covers or other objects if stored in such a way that they are exposed to contact with cargo, or to ladders and batten clips, removable or unremovable. Vessel's holds cleanliness is at Owners time and account.

Vessel's holds to be swept dry free of remainder of any previous cargo on tendering notice of readiness at load port. Any time spent cleaning holds to be for Owner's account. In case of dispute, Charterers and Owner will jointly appoint a surveyor who will decide on cleanliness. Holds to be watertight. Hatch covers, hatch coamings and any openings are to be in good condition and watertight to surveyors satisfaction who may carry out a Water Hose test if he considers same to be necessary.

Any damage to cargo in quality or substance due to contamination by previous unclean holds or infiltration of water throughout holds and/or hatches to be Vessel's responsibility, cargo quantity damaged to be determined by an independent surveyor and Owners to provide P&I CLUB guarantee for security of payment of damages immediately and prior to vessel sailing.



**BMI****COPY**

ADDITIONAL CLAUSES TO CHARTER PARTY MV "GEM OF COCHIN"  
CEMENT CLINKER IN BULK – NANTONG AND ZHOUSHAN / VALENCIA OR CARTAGENA  
DATED IN MADRID 18<sup>th</sup> JULY 2008

**30. (Continued)**

Shippers to arrange for hold inspection immediately upon vessel's tendering NOR whether in berth or at anchorage and vessel to be passed by surveyor before notice is accepted. In the event that it is not possible to arrange hold inspection immediately the Notice of Readiness to be accepted and vessel to be inspected at earliest opportunity and in the event she fails inspection then time from such failure until eventual passing not to count.

If there is a dispute in regard to cargo cleanliness a mutually appointed impartial surveyor should be invited to make the final decision. Time will not count during all time lost due to this reason, however, if Master/Owners are right, time to count.

**31. FINAL CLEANING**

Final trimming and shovel cleaning of holds as far as stevedores can reach standing on tanktop will be done concurrent with discharge and will be carried out for Charterers/Receivers time and expense. Remaining on board cargo per hold shall be as least as possible. Owners have the option to use shore labor to remove excess cargo at their cost with time used to count, during discharging and stevedores final cleaning operations, and stevedore's superintendent.

Vessel should have hull structure for easy cleaning with minimum coaming in holds.

Vessel to permit lowering of front-end unloader or small bulldozers with rubber tires for clean-up of holds.

**32. OWNERS RESPONSIBILITIES**

Owner shall hold harmless and indemnify the Charterers, their officers, employees or agents from any or all claims and expenses relating to the arrest, detention, confiscation or seizure of the vessel by any governmental authority in any country for any reason relating directly or indirectly to the smuggling or illicit trafficking of drugs by the Owner, disponent Owners, operators, Master, officers, employees or its agents. Owner, disponent Owner or operator agrees to pay/reimburse on demand to Charterers, their agents, officers, employees for any and all proven expenses and fees, including legal fees incurred in connection with any action taken by Charterers, their agents, officers, employees in the defence of any such claim referred to above.

Nominated vessels to be classed highest Lloyd or equivalent, possess valid ITF Certificate or equivalent, oil pollution certificate of responsibility and all and any other certificates to enable the vessels enter loading and discharging ports. During the course of this agreement Owners shall, for their sole account, comply with all environmental laws, including without limitation Compensation and Liability Act of 1980, and the Civil Liability Convention and all present and future amendments thereto.

It is the Captain's responsibility to have on board the necessary documentation for navigation, approaching loading and discharge ports, as well as complete and correct immigration documents for him and crew. 32.

Any time lost due to incomplete documentation of vessel and/or crew or any fine submitted therefore, will be for Owner's account.

Owners will ensure that accurate up-to-date deadweight scale, trim data, fuel and ballast tanks tables are on board and available to the surveyor to facilitate calculation of cargo weights. The Captain of the vessel will always give Shippers and receivers before arriving loading and discharge ports a loading or discharge plan, including number of movements, and to be settled prior to loading and/or discharging operations.

BHI

COPY

ADDITIONAL CLAUSES TO CHARTER PARTY MV "GEM OF COCHIN"  
CEMENT CLINKER IN BULK – NANTONG AND ZHOUSHAN / VALENCIA OR CARTAGENA  
DATED IN MADRID 16<sup>th</sup> JULY 2008

**32. (Continued)**

Owner will ensure that all ship's scales and markings are correct and in all respects reliable to produce accurate weight measurements at both loading and unloading ports. Any expense by noncompliance of this requirement will be for Owners account.

Vessel to be equipped with light for night work, which is to be provided free of charge to Charterers whenever required. Opening and closing of hatches to be done at all times by vessel's crew, if permitted by local authorities, otherwise to be performed by shore hands for Charterers account.

Vessel's discharging system and all other equipment should comply with the regulations of the countries in which vessel will be employed. The owner is to ensure that vessel is at all times in possession of valid up to date certificates of efficiency to comply with such regulations. If stevedores, longshoremen, or other workers are not permitted to work due to failure of Master to comply with the aforementioned regulations or because Vessel is not in possession of such valid and up to date certificates then time not to count as lay time and Owners to pay all related proven expenses incurred incidental to and resulting from such failure.

Vessel to supply valid deratization certificate.

Owner/Master will cooperate with Charterer at load port in arranging cargo stowage plan to facilitate efficient discharge and clean out.

Owners to satisfy themselves with restrictions at all ports.

Due to atmospheric and climatic occurrences, port conditions might change, therefore Owners to satisfy themselves that their vessels will be able to safely enter the port including all approaches and safely berth at the appointed berth. Charterers will endeavor and provide Owners with port information as available but without guarantee.

**33. BILL OF LADING**

Bill of Lading weight shall be determined by means of reading the vessel's draft at loading port by independent surveyor and Master and/or Chief officer.

Owners and or Master to authorize Agents at the loading port to sign and release Bills of Lading on their behalf.

If there will be no original Bills of Lading presented to Master on vessel's arrival to discharging port cargo to be released against Letter of Indemnity signed by the receivers and Charterers. Letter of indemnity to be in Owners P and I form.

End user will use original Bills of Lading or 1st class bankers guarantee to discharge cargo.

**34. STEVEDORE DAMAGE**

Stevedore damages given to vessel by stevedores to be settled between stevedores and Owners directly. However Charterers will do their utmost to assist Owners to obtain a settlement with stevedores.

Written notice of damages shall be given to the Stevedores Company, at the time such damage occurs at the loading and discharging ports, or at the earliest opportunity within 24 hours after damage occurred.

Proved damages to be repaired by the stevedores without intervention of the Charterers, Shippers or Receivers. If Owners not able to obtain satisfaction from stevedore, Charterers will do their utmost to assist Owners in obtaining proper settlement from stevedores.

**BMI**

**COPY**

ADDITIONAL CLAUSES TO CHARTER PARTY MV "GEM OF COCHIN"  
CEMENT CLINKER IN BULK – NANTONG AND ZHOUSHAN / VALENCIA OR CARTAGENA  
DATED IN MADRID 16<sup>th</sup> JULY 2008

**35. TAX CLAUSE.**

All taxes and/or dues on cargo and/or freight, including T-3 taxes at port of disch to be for Charterer's account, however all taxes, dues on vessel whether assessed directly or based on the volume of cargo loaded, including all charges falling under customary port charges to be for Owner's account.

36. This agreement and all disputes and claims arising out of or in connection with them, will be governed by, and construed in accordance with English law.

Any dispute arising out of or in connection with this agreement, including any question regarding its existence validity or termination shall be referred to and finally resolved by Arbitration held in London, England, under the rules of arbitration of the International Chamber of Commerce (which rules are deemed to be incorporated by reference into this Clause) by three arbitrators appointed in accordance with the said rules. The arbitration tribunal shall be binding on the parties. Each party expressly waives its right to any form of appeal or recourse from such arbitral proceedings to a court of law or other judicial authority.

**BIMCO STANDARD LAW & ARBITRATION CLAUSE 1998**  
**ENGLISH LAW, LONDON ARBITRATION**

This Contract shall be governed by and construed in accordance with English law and any dispute arising out of or in connection with this Contract shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this Clause.

The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced.

The reference shall be to three arbitrators. A party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other party requiring the other party to appoint its own arbitrator within 14 calendar days of that notice and stating that it will appoint its arbitrator as sole arbitrator unless the other party appoints its own arbitrator and gives notice that it has done so within the 14 days specified. If the other party does not appoint its own arbitrator and give notice that it has done so within the 14 days specified, the party referring a dispute to arbitration may, without the requirement of any further prior notice to the other party, appoint its arbitrator as sole arbitrator and shall advise the other party accordingly. The award of a sole arbitrator shall be binding on both parties as if he had been appointed by agreement.

Nothing herein shall prevent the parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator.

In cases where neither the claim nor any counterclaim exceeds the sum of U.S. \$ 50,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure current at the time when the arbitration proceedings are commenced.

**37. ADDITIONAL CLAUSES**

New Jason Clause, P & I Bunkering Clause, New Both to Blame Collision Clause, The Hague-Visby rules, General clause Paramount, deemed to form part of this Charter Party.

BIM

COPY

ADDITIONAL CLAUSES TO CHARTER PARTY MV "GEM OF COCHIN"  
CEMENT CLINKER IN SULK - NANTONG AND ZHOUSHAN / VALENCIA OR CARTAGENA  
DATED IN MADRID 16<sup>th</sup> JULY 2008

**38. FORCE MAJEURE**

Neither party hereto shall be liable for loss to the other party hereto in the case the party concerned is unable to fulfill the whole or any part of its obligations hereunder or is prevented from or delayed in fulfilling such obligations owing to Act of God or any other reason beyond the control of the party concerned, such as any act of national or local government or any agency thereof, voluntary or involuntary compliance with mandatory rules, regulations or others (including priority request or order) off any government authority or any agency department, officers or instrumentality thereof, political disturbances, intervention of sanitary, customs and /or other constituted authorities, partial or total stoppage on rivers, earthquake, epidemics, quarantine, explosion, act of public and foreign enemies, insurrection, rebellion, tumults, civil commotions, aleatory usurpation of power, riot, war, warlike situations, hostilities (whether war be declared or not), embargo, sabotage, invasion which would affect the working, carriage, delivery, shipment, transfer or discharge of the sold cargo from Shippers' facilities, vessels loading, or shifting from transfer point to Receivers terminals whether this is partial or general, whether similar to the foregoing or not; or accidents at the factories, at receivers work or wharf, landships, etc.

Should any of the events referred to in the preceding paragraph occur, the party whose performance is affected shall give notice to the other party as promptly as practicable of the nature, probable duration and the express cause of such prevention from or suspension of or delay in its performance and shall use due diligence to resume full performance of its obligations at the earliest practicable date.

Should any event of those referred to above continue for a period exceeding one (1) week, either party may, at its option, terminate the settlement in question, in which case neither party may claim damage for performance.

In the event of outbreak of war involving China or any of the major powers or in the event of war or warlike situation in the countries where loading or discharging occurs, Owners or Charterers shall have the right to cancel this voyage. For the purpose of this Clause, the terms "major powers" shall be deemed to include but not excluding the U.S.A., Russia, Great Britain, France, Germany, Norway, Spain, Italy, Turkey, Egypt.

**39. ISM OBLIGATION**

BIMCO ISM Clause to apply

**40. Water Tightness of Holds and Openings**

Irrespective of Owners to warrant holds, all hatches and any access to holds are watertight. Any damage Caused by water ingress due to vessel's deficiencies to be for Owner's account provided it is not caused by the default of charterers.

**41. Vessel's Service / Overtime**

The ship to work overtime, if requested to do so, all extra expenses incurred thereby to be paid by party ordering same, except Officers and crew's overtime which is always to be for Owners' account. Master shall maintain and provide free use of vessel's electric lighting onboard (owners can supply geared lights only), if required for night work. Overtime if ordered by port authority(ies) the same to be shared equally.

Vessel's crew to open and close hatches as required during loading / discharging operations provided same is not prohibited by local regulations.



BMI

COPY

ADDITIONAL CLAUSES TO CHARTER PARTY MV "GEM OF COCHIN"  
CEMENT CLINKER IN BULK – NANTONG AND ZHOUSHAN / VALENCIA OR CARTAGENA  
DATED IN MADRID 16<sup>th</sup> JULY 2008

**41. (Continued)**

Vessel to move up and down at loading and/or discharging berth to facilitate proper loading and/or discharging. Owners agree that the vessel is willing to warp alongside Shippers' / Receivers' quay during loading / discharging operation.

Master / Owners to also advise Charterers' berthing / loading / discharging prospects on arrival of vessel at load and discharge ports and also to keep all concerned regularly informed of loading / discharging status / progress.

Master at sea every 48 hours to report vessel's noon position, weather conditions and ETA discharge port to agent and to charterers by e-mail.

**42. Owner's P. and I.**

Owners guarantee that the vessel is entered for full cover and shall remain entered for the duration of this C/P with a recognized Protection and indemnity Association.

**43. Vessels' Insurance**

Owners guarantee that vessel is fully H+M insured and will remain so for the duration of this C/P.

**44. SHIFTINGS CLAUSE**

The first shifting from the anchorage to loading and or waiting berth at load port and from the anchorage to discharging or waiting berth at discharging port to be Owners account and time not to count even if the vessel is already on demurrage – i.e. time/operation used for first berthing at each port.

However if any other further shiftings at load and/or discharging port same to be fully for Charterers account and time to count.

Warping alongside berths, if any, to be for Owner's account.

**45.** Master to issue and deliver clean on board and freight payable as per Charter Party Bill of Ladings. If the cargo is wet and/or mixed with foreign materials, Owners/Master have the right to refuse loading of such cargo and shippers are obliged to bring dry and clean cargo to the vessel.

**THE CHARTERERS**

**THE OWNERS**

## **EXHIBIT 2**

Cementos Castilla la Mancha, S.A

Ctra. CM 2102, Km. 1  
15440 Montalbo, Cuenca  
Spain

Atlas Bulk Shipping A/S  
11. Sundkaj  
2100 Copenhagen  
Denmark

tel: +45 3927 9400  
fax: +45 3927 9402  
telex: 22200 atlas dk

panmax@atlas-shipping.com  
www.atlas-shipping.com

Date 28. July 2008  
No Draft

### Freight Invoice

M/V GEM OF COCHIN - C/P 16 July 2008

USD

Freight:

45.305,5000 mt clinker at USD 51,500

2.333.233,25

17.288,0000 mt clinker at USD 51,500

890.332,00

Less 5 % balance freight

(161.178,26)

Balance in Owners favour

3.062.386,99

E. & O. E.

### Remittance details

We ask you kindly to transfer above balance with value 30 July 2008 to:

Danske Bank  
Holmens Kanal 2,  
DK-1090 Copenhagen K,  
Denmark  
Swift Code: DABADKKK  
Bank Branch No: Holmens Kanal Afd  
Account No: 3000 3001 536656  
Iban No: DK27 3000 3001 536656  
Beneficiary: Atlas Bulk Shipping A/S  
Corresponding bank: Bank of America N.Y. - SWIFT: BOFAUS3N

Reference: GEM OF COCHIN - Com Ati - F00424 - Client 2004

Yours faithfully  
Atlas Bulk Shipping A/S  
Kevin Bergenser

Page 2

---



### **EXHIBIT 3**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
ATLAS BULK SHIPPING AS,

Plaintiff,

- against -

CEMENTOS CASTILLA LA MANCHA, S.A.

Defendant.  
-----X

ECF Case

**AFFIDAVIT IN SUPPORT OF PRAYER FOR MARITIME ATTACHMENT**

State of Connecticut    )  
                                  )       ss: SOUTHPORT  
County of Fairfield    )

Patrick F. Lennon, being duly sworn, deposes and says:

1.       I am a member of the Bar of this Court and represent the Plaintiff herein. I am familiar with the facts of this case and make this Affidavit in support of Plaintiff's prayer for the issuance of a Writ of Maritime Attachment and Garnishment, pursuant to Rule B of the Supplemental Admiralty Rules of the Federal Rules of Civil Procedure.

**DEFENDANT IS NOT PRESENT IN THE DISTRICT**

2.       I have attempted to locate the Defendant, CEMENTOS CASTILLA LA MANCHA, S.A., within this District. As part of my investigation to locate the Defendant within this District, I checked the telephone company information directory, as well as the white and yellow pages for New York listed on the Internet or World Wide Web, and did not find any listing for the Defendant. Finally, I checked the New York State Department of Corporations' online database which showed no listings or registration for the Defendant.

3. I submit based on the foregoing that the Defendant cannot be found within this District within the meaning of Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims.

4. Upon information and belief, the Defendant has, or will have during the pendency of this action, tangible and intangible property within this District and subject to the jurisdiction of this Court, held in the hands of in the hands of garnishees within this District, which are believed to be due and owing to the Defendant.

5. This is Plaintiff's first request for this relief made to any Court.

**PRAYER FOR RELIEF FOR ORDER ALLOWING SPECIAL PROCESS SERVER**

6. Plaintiff seeks an Order pursuant to Rule 4(c) of the Federal Rules of Civil Procedure, for an Order appointing Patrick F. Lennon, Kevin J. Lennon, Charles E. Murphy, Nancy R. Peterson, Coleen A. McEvoy, Anne C. LeVasseur or any other partner, associate, paralegal or agent of Lennon, Murphy & Lennon, LLC, or any process server employed by Gotham Process Servers, in addition to the United States Marshal, to serve the Ex Parte Order and Process of Maritime Attachment and Garnishment, together with any interrogatories, upon the garnishee(s), together with any other garnishee(s) who (based upon information developed subsequent hereto by the Plaintiff) may hold property of, for or on account of, the Defendant.

7. Plaintiff seeks to serve the prayed for Process of Maritime Attachment and Garnishment with all deliberate speed so that it may be fully protected against the potential of being unable to satisfy a judgment/award ultimately obtained by Plaintiff and entered against the Defendant.

8. To the extent that this application for an Order appointing a special process server with respect to this attachment and garnishment does not involve a restraint of physical property, there is no need to require that the service be effected by the Marshal as it involves simple delivery of the Process of Maritime Attachment and Garnishment to the various garnishees to be identified in the writ.

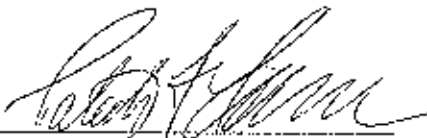
**PRAYER FOR RELIEF TO SERVE LATER IDENTIFIED GARNISHEES**

9. Plaintiff also respectfully requests that the Court grant it leave to serve any additional garnishee(s) who may, upon information and belief obtained in the course of this litigation, to be holding, or believed to be holding, property of the Defendant, within this District. Obtaining leave of Court at this time to serve any later identified garnishees will allow for prompt service of the Process of Maritime Attachment and Garnishment without the need to present to the Court amended Process seeking simply to identify other garnishee(s).

**PRAYER FOR RELIEF TO DEEM SERVICE CONTINUOUS**

10. Further, in order to avoid the need to physically serve the garnishees/banks daily and repetitively, Plaintiff respectfully seeks further leave of the Court, as set out in the accompanying Ex Parte Order for Process of Maritime Attachment, for any process that is served on a garnishee to be deemed effective and continuous service throughout the remainder of the day upon which service is made commencing from the time of such service; and such service to be further deemed effective through the end of the next business day, provided that another service is made that day, and to authorize service of process via facsimile or e-mail following initial *in personam* service.

Dated: August 12, 2008  
Southport, CT

  
\_\_\_\_\_  
Patrick F. Lennon

Sworn and subscribed to before me  
this 12<sup>th</sup> day of August, 2008

  
\_\_\_\_\_  
Notary Public